

District 25 News

MAKIKI, TANTALUS, MCCULLY, PAPAOLEA

JANUARY 2009



Dear Friends & Neighbors,

The 2009 Legislative Session is in full swing with challenges and tough choices ahead for all involved. Prioritizing programs and policies that should be preserved during these budget-slashing times will require advocacy from within and from the community at-large. To assist my decision-making, I urge you to send in your priorities in the survey included in this month's newsletter.

In addition to the budget, there will be many other issues tackled by the Legislature including the proposed ceded lands moratorium, a fireworks ban, and the preservation of high-technology tax credits. Please feel free to contact me on these – or any other – matters that are before the Legislature.

Although the task of governing during these challenging economic times is fraught with tough choices, my pledge is to work diligently and make decisions based upon the best information available to me as your representative. I welcome your input and look forward to your questions or comments throughout the legislative session.

With aloha,

Della Au Belatti
State Representative, District 25

The Shortlist

Legislative Talk Story with our area Legislators

Senator Fukunaga, Representatives Rhoads and Belatti will present their mid-session legislative update to the community and host any questions about this year's legislative session. For more information about the event, call Rep. Belatti at 586-9425.

WEDNESDAY, MARCH 4

Frank F. Fasi Citizen Resource Center,
Makiki Library @ 6:30—8:30pm

Legislative Deadline: First Lateral

All bills referred to more than one committee (i.e. those with multiple referrals) must move to their final committee in the originating chamber by this day.

FRIDAY, FEBRUARY 20

Legislative Deadline: First Crossover

Deadline for legislative bills to pass third reading in order to move (or "crossover") to the other chamber. If successful, House bills are sent to the Senate and Senate bills are sent to the House for further consideration. Note: If identical bills pass out of both chambers, the bill that passed out first will normally become the "vehicle" bill that survives and the other bill will be "held" or no longer considered for the session.

THURSDAY, MARCH 12

District 25 News

To comment on something written in *District 25 News* or to request regular e-delivery, please write to:

Representative Della Au Belatti
State Capitol, Room 331
Honolulu, HI 96813
rebelatti@capitol.hawaii.gov

An electronic copy may also be downloaded from the Representative's House Majority web page at
http://www.capitol.hawaii.gov/hsemaj/.belatti_della.html.

The state's responsibility toward ceded lands is an important issue in this year's legislative session. Governor Linda Lingle and State Attorney General Mark Bennett have appealed a Hawaii Supreme Court case involving ceded lands to the United States Supreme Court. This case will be heard next month on February 25, 2009.

In response to this, many native Hawaiian groups have protested the state's decision to appeal and have called for a moratorium on the sale or transfer of ceded lands.

*Ceded lands are held in trust by the State of Hawaii for the benefit of **all** citizens of the state, and **all** citizens should know what is at stake in this complex debate.*

The High Court Case on

❖ **CEDED LANDS** ❖

What are "ceded lands?"

The Kingdom of Hawaii held 1.8 million acres of Government and Crown Lands. After the overthrow of the Hawaiian Kingdom in 1893, the Republic of Hawaii claimed these lands. In 1898, under the Newlands Resolution, the Republic "ceded" these lands to the United States. When Hawaii became a state in 1959, the federal government transferred 1.4 million acres of the land to the state, to be held in trust. 200,000 acres were set aside under the Hawaiian Homes Commission Act of 1920 for Hawaiian homesteads. The State held the remaining 1.2 million acres of land **in trust** under section 5(f) of the Admission Act, for the following five purposes: (1) supporting public schools, (2) supporting other public educational institutions, (3) the betterment of the conditions of native Hawaiians, (4) farm and home ownership, and (5) lands for public use. The Office of Hawaiian Affairs ("OHA") administers proceeds from the ceded lands for the betterment of the conditions of native Hawaiians.

What is the US Supreme Court lawsuit known as *State of Hawaii vs. OHA* about?

In the late 1980s, the State began plans to transfer parcels of ceded land on Maui and the Big Island to private land developers. OHA would receive 20% of the fair market value of the parcel transferred. The United States Congress then issued the **Apology Resolution** in 1993, which stated that the overthrow of the Hawaiian Kingdom in 1893 was illegal, without the consent of or compensation to native Hawaiians, and that native Hawaiians may have unrelinquished claims to the lands.

When it came time for the transfer of the ceded lands to the private developer, William Meheula (OHA's lawyer) insisted that the land remain subject to the unrelinquished claims of native Hawaiians. Housing and Community Development Corporation of Hawaii ("HCDCH"), the state agency coordinating the transfer of land, refused, stating that to do so would put a "cloud" over the title to the land. When OHA received a check from the proceeds of the sale of the land, it did not cash it. Instead, OHA and four individual plaintiffs (Pia Thomas Aluli, Jonathan Kamakawiwo'ole Osorio, Charles Ka'ai'ai, and Keoki Maka Kamaka Ki'ili) sued the State. They argued that the State's sale of ceded land breached its trust duties towards native Hawaiians so long as unrelinquished claims on the land exist. The OHA plaintiffs wanted to prohibit the state from selling ceded lands until native Hawaiian claims are settled. At the circuit court level, the State won. Upon appeal to the Hawaii Supreme Court, the OHA plaintiffs won.

The Hawaii Supreme Court held that "the Apology Resolution and related state legislation give rise to the State's fiduciary duty to preserve the corpus of the public lands trust, specifically, the ceded lands, until such time as the unrelinquished claims of the native Hawaiians have been resolved." The State then appealed the case to the United States Supreme Court, which is scheduled to hear the case next month.

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Quick glossary ✧

The Apology Resolution: Also known as United States Public Law 103-150. Both houses of Congress passed this bill, and President Bill Clinton signed this bill, in 1993. It acknowledged that the overthrow of the Hawaiian Kingdom in 1993 was illegal, without the consent of or compensation to native Hawaiians, and that native Hawaiians may have unrelinquished claims resulting from the overthrow.

DHHL (The Department of Hawaiian Homelands): It is in charge of 200,000 acres of ceded lands that are dedicated to Hawaiian homesteads.

HCDCH (Housing and Community Development Authority of Hawaii): formerly the Housing Finance and Development Corporation, this agency was created by the State of Hawaii to address the need for affordable housing. It facilitated the proposed development of the Maui and Big Island parcels of ceded lands in the OHA v. HCDCH case.

Native Hawaiian: refers to any person of Native Hawaiian ancestry, regardless of blood quantum. The term refers to all persons descended from the Polynesians who lived in the Hawaiian Islands when captain James Cook arrived in 1778.

native Hawaiian: refers to a Native Hawaiian with at least 50% Hawaiian blood. This is the definition of "native Hawaiian" found in the Hawaiian Homes Commission Act of 1920.

The Newlands Resolution: A joint resolution annexing Hawaii passed by both houses of the United States Congress in 1898. In it, the Republic of Hawaii "ceded" to the United States 1.8 million acres of former Crown and Government Lands.

OHA (Office of Hawaiian Affairs): This agency was created by an amendment to the Hawaii Constitution after the Constitutional Convention of 1978. It is in charge of using its share of the ceded lands and ceded lands proceeds to better the conditions of native Hawaiians.

Quick resources ✧

Hawaii Supreme Court opinion
Office of Hawaiian Affairs v.
Housing and Community Development Corporation of Hawaii,
117 Hawaii 174 (2008)

<http://www.state.hi.us/jud/opinions/sct/2008/25570.pdf>

United States Supreme Court briefs Hawaii vs. Office of Hawaiian Affairs, Docket No. 07-1372

The State of Hawaii's Merits brief
http://www.abanet.org/publiced/preview/briefs/pdfs/07-08/07-1372_Petitioner.pdf

The OHA Plaintiffs' Response brief
http://www.abanet.org/publiced/preview/briefs/pdfs/07-08/07-1372_Respondent.pdf

2009 State Legislative moratorium bills (see below for bill #'s)

<http://www.capitol.hawaii.gov>

Click on "Bill Status & Documents" from the left menu, and enter the bill numbers as instructed.

Ceded Lands Court Case *continued from page 2*

What are the arguments on both sides?

The State argues that the Hawaii Supreme Court's interpretation of the Apology Resolution "strips" it of its authority to sell ceded lands. It argues that it received fee simple title to the ceded lands under the Newlands Resolution, and that the Apology Resolution did not alter its right to sell ceded lands, free and clear of native Hawaiian claims.

The OHA plaintiffs argue that the Apology Resolution merely points to the existence of unrelinquished claims to the ceded lands that the State, as a trustee, has a duty to preserve the ceded lands until the claims upon the lands have been settled.

What would a moratorium do?

A moratorium would temporarily ban the sale or transfer of ceded lands.

How will the native Hawaiian claims be settled?

At the state level, reconciliation is always a possibility, if the political will exists and if the settlement offered to native Hawaiians is fair. At the federal level, the Akaka

Bill contemplates establishing a native Hawaiian governmental entity that will enter into negotiations with the State and federal government to settle native Hawaiian claims.

What is the Legislature doing about the ceded lands issue this session?

There are a number of bills that have been introduced dealing with ceded lands. They are:

HB 1667 / SB 1085, introduced by the Hawaiian Caucus, proposing a moratorium on the sale, exchange, or transfer of ceded lands.

HB 902 / SB 996, proposed by OHA and introduced by Speaker Calvin Say and Senate President Colleen Hanabusa, also proposes a moratorium on the sale, in fee simple, of ceded lands.

SB 475 prohibits the sale or exchange of ceded lands until the United States Supreme Court issues its decision on the appeal of *OHA vs. HCDCH*.

SB 476 requires a two-thirds majority vote of the legislature to adopt a concurrent resolution to sell or exchange ceded lands.

Volunteers “Renew America Together” through Makiki District Park cleanup

By MATT WINFREE

Representative Belatti, Friends of the Makiki Community Learning Center (MCLC), Hui o Makiki, and the Makiki community joined a nationwide volunteer campaign to “Renew America Together” on Martin Luther King, Jr., Day, January 19, 2009, by gathering to clean and beautify the Makiki Community Learning Center and its surrounding area. Over 50 volunteers from the surrounding neighborhood, neighboring districts, and as far away as Nepal repainted bus stops, scoured floors, sanded furniture, and reorganized hundreds of books in an effort to prepare the Community Learning Center for its grand reopening in March.

The phenomenal attendance of the clean-up was due in part to President Barack Obama’s and First Lady Michelle Obama’s national call for community service through the “Renew America Together” service initiative and its corresponding website, www.USAService.org. The First Lady recorded a YouTube video for the website beseeching all Americans to become involved in a continuous, persistent volunteer effort to help strengthen their communities through service. Interested volunteers were then able to log on to the website and post community service opportunities or sign up to participate in a particular event. Participants who registered for the Makiki clean-up online included Oahu residents from Makiki, Waikiki, Chinatown, and Kailua, as well as foreign volunteers from the Unification Church who came from as far as Japan, Nepal, and the Philippines.

Although the clean-up only lasted from 9 am to noon, the enthusiastic workers were able to finish all of their projects by midday. Their



JANUARY 19, 2009—Re-painting old furniture was one of many jobs volunteers performed at the MCLC cleanup. The mission to transform Makiki’s old district library into a new and vibrant Community Learning Center aligns with President Obama’s call for communities and individuals to “Renew America Together.”

efforts helped bring the learning center one step closer to its grand reopening, which Friends of the MCLC hopes will occur in March of this year. In November 2005, the City closed the Makiki District Library and began extensive renovations including new windows, a fire escape, an elevator, a special-needs lift to the mezzanine, and extensive work on the deteriorating upper floors. Mayor Mufi Hanneman returned the renovated library to the Friends group in March 2008, and they have been working since then to ready the library for public use. Due to the library’s expanding role as a gathering place for community events and a host location for a variety of monthly citizen resource workshops, the name of the facility has been changed to the Makiki Community Learning Center. The MCLC is currently open on Wednesdays from 2-6pm, on

Saturdays and Sundays from 12-4pm, and for special events like the “Informed Citizen” Workshop this past January 7th. If you are interested in upcoming events at the Learning Center, please contact Norma K. Koenig at 946-3291.

“The MCLC is an important nexus of our community, and I’m proud to be a part of the effort to get it up and running at full capacity,” said Representative Belatti. “I am also optimistic that the Renew America Together service initiative will continue far beyond the MCLC and Martin Luther King, Jr., Day. Like our President and First Lady, I hope that the initiative will encourage all Americans to contribute to the betterment of their communities throughout the year.”

Matt Winfree is a legislative aide to Representative Belatti, a Makiki resident, and an experienced MCLC floor-scourer, book-mover, and furniture-painter.

2009 Community Survey

Please spend a few minutes to read through and provide your comments on the following issues.

Many thanks to those who provided their responses to last year's survey. Survey results were compiled and published in the October/November 2008 issue of *District 25 News*. An electronic version of this and all other newsletters may be downloaded from Representative Belatti's House Majority webpage at http://www.capitol.hawaii.gov/hsemaj/belatti_della.html. Your name and address are optional, but we will send responses only to those who provide their mailing information.

STATE ECONOMIC PRIORITIES

As we enter a period of economic uncertainty, state legislators will be tasked this session to prioritize spending, outline new policies, and make adjustments to old ones. Please rank the following ideas for spending in order of importance to you.

- ___ Ensuring energy self-sufficiency/sustainability
- ___ Investing in our natural, historic, and cultural resources
- ___ Maintaining high-tech tax credit
- ___ Streamlining state tax code
- ___ Funding UH system improvements
- ___ Maintaining funding for K-12 education programs
- ___ Improving state K-12 educational facilities
- ___ Improving traffic and pedestrian safety
- ___ Maintaining funding to ensure accessible basic healthcare for all
- ___ Maintaining funding for state social programs and community services
- ___ Improving infrastructure for agriculture (i.e. dams, reserves, irrigation)
- ___ Improving transportation infrastructure (i.e. roads, highways, harbors, airports)
- ___ Improving government operations and efficiency
- ___ Other _____

CONSUMER (PERSONAL) FIRECRACKERS IN HAWAII

Proponents for a fireworks ban argue that fireworks laws are becoming even more difficult to enforce and law-breakers and uneducated fireworks users create a strain on emergency services agencies, including fire, police and ambulance. A statewide ban (instead of allowing each county to decide for themselves) is the only proper solution to ensure illegal fireworks aren't transported between islands. And at least within Oahu's growing and dense urban core, fireworks play continues to be a public safety hazard to people, animals, and property and state laws much be changed to keep up with changing times.

Opponents against a fireworks ban argue that firework celebrations are long-held cultural and historic traditions that the public has a right to enjoy. A complete ban on fireworks seeks to take away this privilege from those who obey the laws, instead of just those who choose to break them. State lawmakers must continue to consider and work with other ways to regulate the sale and use of fireworks rather than imposing an outright ban including a tax surcharge, tougher criminal punishments, and tougher restrictions in urban areas.

Do you support a ban on fireworks? The following responses correspond with various legislative proposals to regulate fireworks.

- ☐ YES. I support a statewide ban on fireworks.
- ☐ YES. I support a ban on fireworks, but only on the island of Oahu.
- ☐ NO. I do not support a ban on fireworks.
- ☐ NO. I do not support a ban on fireworks, but I do support a surcharge tax on the sale of fireworks that will go to fund non-crucial State Department of Health programs.
- ☐ NO OPINION/NO ANSWER.

Continued on page 6

THE STATE COMMISSION ON SALARIES

Since 2007, pay raises enacted by the Hawaii Commission on Salaries have affected leading members of all three branches of state government. Due to the harsh economic climate of our state, some have argued that it is inappropriate for these government officials to receive pay raises while the rest of the state's citizens are suffering. The Constitution provides the legislature with the ability to reduce the pay of government officials, however it also requires that legislators must decrease the pay of all those affected by the Commission's original recommendations. Such a decrease would affect state senators, state representatives, supreme court judges, the governor and lieutenant governor, and many other state employees.

With these facts in mind, do you believe that:

- ☐ The salaries of all applicable government officials should receive an across-the-board percentage decrease.
- ☐ There should be a freeze placed on all future pay raises until economic conditions improve.
- ☐ No action should be taken, and salary amounts should stay consistent with the salary commission's recommendations.

CEDED LANDS COURT CASE

Next month, the United States Supreme Court will hear *State of Hawaii vs. OHA* (see article “The High Court Case on Ceded Lands” starting on page 2). This case involves the issue of whether the State has the authority to sell or otherwise transfer ceded lands to private entities, or whether the unsettled native Hawaiian claims to the lands should prevent the State from doing so.

Further, the Akaka Bill, should it pass, would create a governmental entity for native Hawaiians to settle land claims (and other issues) with the United States government. In light of these events, would you support a moratorium (a temporary prohibition) on the State's selling or transferring of ceded lands?

- ☐ YES. I believe that until native Hawaiian claims to the ceded lands are settled, the State should not sell or transfer ceded lands.
- ☐ NO. I believe the State should proceed with selling and transferring lands, and that native Hawaiian claims to the ceded lands can be settled later.
- ☐ NO OPINION. I have no opinion on this issue because I feel that it is a native Hawaiian issue, and I am not native Hawaiian.
- ☐ NO OPINION. I have no opinion on this issue.

CONTACT INFORMATION

Name

Address

Phone

Email

- ☐ Please sign me up for e-updates.

COMMENTS

Please feel free to comment on any of the survey questions or other concerns.

Send your completed survey to:

Representative Della Au Belatti
State Capitol, Room 331
415 South Beretania Street
Honolulu, HI 96813